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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,804	09/19/2003	Kenneth Perlin	KPER-7	6630

7590

07/27/2005

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EXAMINER

MERLINO, AMANDA H

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

Office Action Summary	Application No. 10/665,804	Applicant(s) PERLIN, KENNETH	
	Examiner Amanda H. Merlino	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on september 19, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-19 is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 20-21 is/are rejected.
- 7) ☒ Claim(s) 3-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-10 and 13-21 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-19 of copending Application No. 10/620,920.

This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 20-21 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Davis et al (5,637,873).

Davis et al teach of an apparatus for determining a bidirectional reflectance distribution function of a subject comprising a light source (20) for producing light, a CCD (26) for sensing the light and an ellipsoidal mirror (see figure 5) for focusing the light between the light source and the sensing means and the subject, and a computer

(7) connected to the sensing means for measuring the bidirectional reflectance function of the subject.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al (5,637,873).

Davis et al teach of an apparatus for determining a bidirectional reflectance distribution function of a subject comprising a light source (20) for producing light, a CCD (26) for sensing the light and an ellipsoidal mirror (see figure 5) for focusing the light between the light source and the sensing means and the subject, and a computer (7) connected to the sensing means for measuring the bidirectional reflectance function of the subject.

Davis et al lacks the teaching the sensing means (CCD) having a light absorbing wall.

Official Notice is taken that of light absorbing wall/screens are old and well known in the art. See *In Re Malcolm* 1942C.D.589:543 O.G.440. At the time of the invention it would have been obvious to one of ordinary skill in the art to place a light absorbing wall/screen as part of the sensing means to absorb ambient light and/or unwanted light

from the light source to obtain a more accurate image which would provide a more accurate measurement of the brdf.

Allowable Subject Matter

Claims 3-12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-19 allowed.

As to claims 3-12, the prior of record, taken alone or in combination, fails to disclose or render obvious an apparatus for determining a bidirectional reflectance distribution function wherein the focusing means includes a hollow tube lined with mirrors through which light from the light sources passes, in combination with the rest of the limitations of claims 3.

As to claims 13-19, the prior of record, taken alone or in combination, fails to disclose or render obvious a method for determining a bidirectional reflectance distribution function of a subject comprising the steps of placing an optical hollow structure against the subject and reflecting light at various angles from the subject through the hollow structure, in combination with the rest of the limitations of claim 13.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda H. Merlino whose telephone number is 571-272-2421. The examiner can normally be reached on Monday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on 571-272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amanda H Merlino *ah*
Patent Examiner
Art Unit 2877
July 21, 2005


HWA (ANDREW) LEE
PRIMARY EXAMINER
Lor

Gregory J. Toatley, Jr.
Supervisory Patent Examiner